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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/980,421

04/23/2002

John D Puskas

3303

7590

09/06/2006

John D. Puskas
854 Carlton Ridge
Atlanta, GA 30342

EXAMINER

MANUEL, GEORGE C

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 09/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/980,421

Applicant(s)

PUSKAS, JOHN D

Examiner

George Manuel

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-21,23 and 41-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-21, 23, 41-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/30/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 5, 6-8, 11, 13-15, 45-48 and 50-53 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Webster; Jr. et al (US 6,292,695).

Webster; Jr. et al disclose an expandable electrode assembly 12 comprising a plurality of electrodes 14 and 16. Signal generator 18 is capable of applying an electric pulse to the expandable electrodes.

Regarding claims 7, 52 and 53, the examiner is interpreting the angles to be referenced to the puller wire 36.

Claims 4, 17-19 and 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Klepinski (US 5,282,468).

Klepinski discloses fingers 14a-14n that extend from a central spine 12 and are non-conducting. Because the fingers are molded of a semi-rigid polymer, they can be spread apart to form confronting jaws.

Claims 1, 7, 9, 10, 12, 16, 41-44 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Scarberry (US 4,351,330).

Scarberry discloses an electrode area 58 where an expanding electrode contacts adjacent tissue. It is inherent the electrode area 58 is capable of contracting the inner surface of the esophagus or contacting the tracheal wall when the inflatable means 30 is inflated.

Regarding claim 7, the examiner is interpreting the first and second angles to be relative to the tube 22.

Regarding claims 9 and 10, Scarberry teaches a suitable tracheal obturator may be spherical or cylindrical, having a diameter of 4-5 mm and a length of about 4 cm.

Claims 45 and 49 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Tu et al (US 6,123,718).

Tu et al disclose a balloon catheter that is capable of placing a spiral electrode 11 (see Fig. 4A) in contact with a wall of the esophagus.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 20 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klepinski (US 5,282,468) in view of Tu et al (US 6,123,718).

Klepinski discloses all of the claimed features except for a wire mesh electrode.

Tu et al teach providing a wire mesh electrode for tissue contact. See col. 9, lines 30-37.

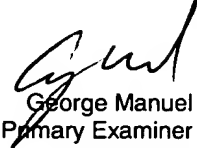
One of ordinary skill in the art would have found it obvious to use the Tu et al teaching to form the electrode 18a in a mesh pattern as disclosed in Tu et al because the metallic foil disclosed in Klepinski is a thin coating material similar to the mesh electrode disclosed in Tu et al and because the teaching of Tu et al applies to elastic electrode structures intended to be flexed in a manner similar to the flexing that is imparted to the electrode structure disclosed in Klepinski.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George Manuel whose telephone number is (571) 272-4952.


George Manuel
Primary Examiner
Art Unit: 3762

9/1/06